

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION**

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IN RE:

BKY. NO. 04-35005

JOHN G. HERNANDEZ AND  
GWENDOLYN D. HERNANDEZ,

**RESPONSE**

DEBTOR(S).

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**TO: U.S. Trustee, Chapter 13 trustee and all parties in interest entitled to notice under Local Rule 3015-2.**

1. Debtors, by and through their undersigned attorney of record and pursuant to Local Rule 9013-2(b), interpose this Response in opposition to the Objection to Confirmation of Plan tendered to the Court by Affinity Plus (hereinafter “secured creditor”). Hearing on this matter is set for Thursday, October 28, 2004 at 10:00 a.m. before the Hon. Gregory F. Kishel, Chief Judge of Bankruptcy Court in Courtroom 228B, United States Courthouse, 316 North Robert Street, Saint Paul, MN 55101.
2. This Chapter 13 case was commenced on August 26, 2004. The debtors’ 11 U.S.C. § 341 First Meeting of Creditors was held on September 21, 2004.
3. The secured creditor’s objection is based upon several grounds. Namely, secured creditor contends that the debtors’ plan has not been tendered in good faith and that value of the property to be distributed under the plan to the secured creditor is less than the claim filed by said creditor. Secured creditor also contends that the plan does not comply with 11 U.S.C. § 1325(a)(5), and it objects to the treatment of its claim under the plan. The secured creditor further contends that it is not adequately protected by the terms of the debtors’ plan. The secured creditor further contends that it is not adequately

protected in that not only have the debtor's have proposed to pay its claim 0.0% interest but also the secured creditor will not receive payment until month 12 of the plan.

4. Secured creditor acknowledges that the debtors have listed it as secured in their plan in the amount of \$3,480.00. Secured creditor contends that the NADA value for the debtors' 1993 Ford Ranger Splash Short Bed pickup truck is \$3,000.00 and that the NADA value for the debtors' 1969 Ford ½ ton pickup truck is \$6,325.00.
5. The debtors contend that the secured creditor is entirely wrong with its assertions of value as to the two vehicles. The debtors have obtained a Kelly Blue Book value for the 1993 Ford Ranger of \$1,660.00. The debtors valued this vehicle at \$1,980.00 in their bankruptcy schedules. Though they have consulted with not only a representative of the Wells Fargo Bank in Blue Earth, Minnesota but also a representative of the Ford dealership in Fairmont, Minnesota, they have not been able to obtain a Kelly Blue Book value or a NADA value for the 1969 Ford ½ ton pickup truck. The debtors learned that the 1969 Ford ½ ton pickup truck is too old to be found in either the NADA Blue Book or the Kelly Blue Book. The debtors have no idea how the secured creditor obtained a NADA Blue Book value for the 1969 Ford ½ ton pickup truck when, to their understanding, no such value for said asset is available through that resource.
6. The debtors contend that their value of the secured creditor's claim is reasonable given that the value of the 1993 Ford Ranger is \$1,660.00 and given that they listed its value as \$1,980.00, a value that is \$320.00 more than the Kelly Blue Book value. The debtors contend that the value of the 1969 Ford ½ ton pickup truck is generously estimated at \$1,500.00. The 1969 Ford ½ ton pickup truck is literally in parts. The mileage is not

known and it has a manual transmission. The front end gears are stripped and broken and the vehicle's brakes are in very poor condition. Additionally, the vehicle will not start and has bad brake lines. Given these facts, the debtors' value of the item is extremely generous.

7. The debtors contend that the secured creditor has no basis upon which to assert a value as to the items because it has no knowledge at all as to the condition of the vehicles. It is not familiar with the mileage or the conditions of the vehicles' exteriors and interiors. It has not had any party inspect the vehicles or even view them. Therefore, any claim of value asserted by the secured creditor should be viewed with, at the very least, considerable incredulity and scrutiny.
8. The debtors contend that the secured creditor has not even filed a proof of claim asserting a secured interest or claiming secured status in their bankruptcy. The only claim filed by the secured creditor was an unsecured claim in the amount of \$1,916.69. Should the secured creditor subsequently file a claim asserting a secured status in the amount listed in its objection, the debtors will likely object to that claim.
9. Despite any delay in payment or lack of interest, the secured creditor is still adequately protected in that its collateral may be scheduled for higher values than what may actually be the case. The debtors have amortized the value of \$3,480.00 over 31 months and have used the cram down interest rate of 8%. The 31 months represents the number of months until the creditor is paid the stated amount. When this figure is so calculated, the debtors have determined that the value of \$3,863.53 is achieved. Indeed, this figure is only \$383.53 higher than the \$3,480.00 that the debtors have proposed to pay the secured

creditor. When one considers that the Kelly Blue Book value of the 1993 Ford Ranger is actually \$1,660.00 rather than the \$1,980.00 that the debtors scheduled (a \$320.00 difference), the debtors assert that this secured creditor is actually quite well treated in their plan. The \$383.53 that would not be paid because of the 0.0% interest listed by the debtors and any potential harm to the secured creditor caused by the delay in payment would be offset by the higher value listed by the debtors.

10. If testimony is requisite at any hearing concerning the secured creditor's objection, the debtors reserve their right to call themselves as witnesses as well as any and all parties called by the secured creditor.

**WHEREFORE**, the debtors respectfully request the Court not only to overrule the secured creditor's objection in its entirety but also to grant any further relief it deems appropriate and equitable in the premises.

Dated: this 20<sup>th</sup> day of October, 2004.

**ESKENS, GIBSON & BEHM LAW FIRM, CHTD.**

/s/ Stephen J. Behm  
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IN RE:

BKY. NO. 04-35005

JOHN G. HERNANDEZ AND  
GWENDOLYN D. HERNANDEZ,

**UNSWORN CERTIFICATE  
OF SERVICE**

DEBTOR(S).

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I, Stephen J. Behm, attorney with Eskens, Gibson & Behm Law Firm, Chtd., 115 East Hickory Street, Suite 200, P.O. Box 1056, Mankato, MN 56002-1056, declare that on October 20, 2004, I mailed copies of the attached **Response** by first class mail postage prepaid to each entity named below at the addresses stated below for each entity.

Michael J. Farrell, Chapter 13 trustee, P.O. Box 519, Barnesville, MN 56514.

U.S. Trustee, 1015 U.S. Courthouse, 300 South Fourth Street, Minneapolis, MN 55415.

John G. Hernandez and Gwendolyn D. Hernandez, P.O. Box 513, Frost, MN 56033.

William C. Hicks, Attorney at Law, 3033 Campus Drive, Suite 250, Plymouth, MN 55441.

Dated: this 20<sup>TH</sup> day of October, 2004.

**ESKENS, GIBSON & BEHM LAW FIRM, CHTD.**

/s/ Stephen J. Behm  
Stephen J. Behm, #263758  
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